

INVENTOR: McBride et al

attorney docket: CARDIOBEAT-2

TITLE: MEDICAL TESTING INTERNET SERVER SYSTEM AND METHOD

REMARKS

Claims 1 through 19 are in the application as filed.

Claims 1-3, 8, 9 and 13-16 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al.

Claims 4-7 and 19 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al in view of Basso et al.

Claims 10-12 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al in view of Shimakawa et al.

The claims are being amended to advance prosecution of this application. The amendments specifically narrow the claims to cover impedance cardiography as disclosed as the illustrative embodiment in the application as filed. Applicant disagrees with the Examiner's contentions relative to the claims and the Examiner's reading of the references of record. Applicant by amending the claims does not acquiesce in the rejections and specifically reserves the right to represent the claims in a continuation application.

It is believed that the amendments to the claims overcome all the bases for the Examiners objections. None of the references shows, teaches or suggests use of impedance cardiography test measurement software. None of the references shows, teaches or suggests impedance cardiography algorithms for processing impedance cardiography test measurement data. None of the references shows, teaches or suggests use of impedance sensors.

Accordingly, it is believed that since claim 1 includes the foregoing limitations, claim 1 is not shown, taught or made obvious by the references. In addition, since all the remaining claims depend from claim 1, it is likewise believed that none of the claims are shown, taught or made obvious by the references taken singly or in combination.

Claim 1 as previously presented provided that the central serving apparatus has access to "medical test measurement software" and "computer program algorithms for processing medical test measurement data".

It is respectfully submitted that the Examiner is not following the examination standards for determination of obviousness.

The Examiner's attention is drawn, in particular, to MPEP 706.02(j) and MPEP 2143 and the three basic criteria that must be set out to establish a prima facie case of obviousness.

The first criteria is that "there must be some suggestion of motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings."

"Second, there must be a reasonable expectation of success."

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"Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicants disclosure." MPEP 2143 quoting *In re Iack*

MPEP 706.02(j) quotes *Ex Parte Clapp*: "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention, or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to be obvious in light of the teachings of the references."

MPEP 2143.01 clearly points out that the "level of skill in the art cannot be relied upon to provide the suggestion to combine references" *Al-Site Corp. v. ISI Int'l Inc.*

MPEP 2143.01 further provides the clear guidance that: "A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references," citing *Ex parte Levengood*

MPEP 2143.01 further clearly provides the guidance that the proposed modification of the prior art cannot change the principle of operation of the prior art reference.

The Examiner's attention is also directed to MPEP 2144.03 which clearly sets forth the standards, in accordance with *In re Zinko* and the other cases cited therein, for reliance on "well known" prior art. The Examiner's attention in particular is directed to 2144.03 C wherein "If applicant challenges a factual assertion as not properly officially noticed or not properly based upon common knowledge, the Examiner must support the finding with adequate evidence."

There is no suggestion in either of the references applied to claim 1 that they may be combined as suggested by the Examiner.

The Examiner's reliance on *In re Oetiker* is misplaced, and even if it wasn't, the Examiner fails to follow what he characterizes as the holding of *Oetiker*.

The Examiner attempts to justify his position by stating at page 6 of the Office Action: "...Yamada et al deals with medical testing of patients by use of X-rays, which is a monitoring device that is used for medical purposes. Both Brown and Yamada et al use a computer to process medical data."

The Examiner's logic is nonsensical. It is specifically requested that the Examiner provide evidence that an X-ray device is a "monitoring device".

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What is common knowledge is that X-ray devices are not used to monitor patients because of the well established harmful effects of continuous or extended exposure to X-rays. The entirety of Yamada et al is directed to a system for storing and operating on digital images that are obtained from X-ray machines and the like.

Yamada et al does not "process medical data". Yamada processes digital images. It is submitted that an image is not medical data that is obtained from a sensor.

Brown and Yamada et al are in different International and US classifications. The reason that they are in different classifications is that the U.S. Patent Office has recognized that the teachings are unrelated.

Yamada et al is directed to a "picture archiving communication system for storing, transferring various digital image data..." (first sentence of Abstract). This is clearly evident from FIG. 1 of Yamada which illustrates that all of the Modalities 10 are image generating devices, not medical sensors. At no place does Yamada process medical test data received from sensors. Rather Yamada stores and processes image data.

In contrast, Brown is directed to a system for interactive communication and monitoring of patients.

There is no suggestion in Brown that it may be combined with "a picture archiving system." There is no suggestion if Brown that its teachings may be modified as the Examiner suggest.

There is no suggestion in Yamada that the image archiving system may be utilized in a patient monitoring system. There is no suggestion in Yamada that its teachings may be utilized to modify a patient monitoring system.

It is therefore respectfully submitted that one skilled in the art would not be lead to combine the teachings of Yamada and Brown in the manner the Examiner has suggested.

The Examiner ignores that Brown and Yamada et al are directed to different and incompatible systems. The Examiner must take each reference for what it fairly teaches within its four corners, and cannot pick and chose only those portions of references in order to cobble together an arrangement that teaches the claimed invention. The Examiner unfairly ignores the totality of the teachings of the references.

Claim 1 as currently amended states, inter alia: "utilizing said central serving apparatus to access impedance cardiography test measurement software; utilizing said central serving apparatus to access one or more computer program impedance cardiography algorithms for processing impedance cardiography test measurement data".

At no place does Brown teach or suggest that its central server has access to medical test measurement software of any kind or one or more computer program algorithms for

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processing medical test measurement data as called for in claim 1. Brown is silent on impedance cardiography.

In addition, claim 1 further recites, inter alia: "utilizing said downloaded impedance cardiography test measurement software at said patient Internet device to provide impedance sensor placement information to a patient; utilizing said impedance cardiography test software at said patient Internet device to provide diagnostic testing operation and operability of said impedance sensors"

At no place does Brown show, teach or suggest any providing of sensor placement information as called for in claim 1. At no place does Brown show, teach or suggest utilizing medical test software at the patient Internet device to provide testing operation and operability of the sensors as called for in claim 1. Brown is silent on impedance cardiography and impedance sensors.

Still further, claim 1 recites, inter alia: "obtaining impedance cardiography test measurement data via said sensors; uploading said impedance cardiography test measurement data to said central server from remote locations via said patient Internet apparatus via the Internet"

Brown is absolutely silent on obtaining test measurement data from sensors and uploading test measurement data to a central server as called for in claim 1. Brown is silent on impedance cardiography.

Yet further, claim 1 recites, inter alia: "selecting one computer program impedance cardiography algorithm from said at least one or more computer program impedance cardiography algorithms at said central serving apparatus; utilizing said one computer program impedance cardiography algorithm at said central serving apparatus to process said impedance cardiography test measurement data; processing said impedance cardiography test measurement data in accordance with said one computer program impedance cardiography algorithm to produce test information from said impedance cardiography test measurement data"

Brown is silent on selecting any computer program algorithm at the central server. Brown is silent on utilizing any computer program algorithms at the central server to process medical test measurement data. Brown is further silent on processing any medical test measurement data for any purpose or in any manner and is absolutely silent on producing test information from test measurement data. Brown is silent on impedance cardiography. Brown is silent on impedance cardiography algorithms.

Brown is directed to an entirely different type of system in which a script of questions is provided to a patient and the responses to the scripted questions is utilized.

Yamada is directed to an unrelated type of system and is absolutely silent on impedance cardiography.

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In view of the foregoing, claim 1 is not shown, taught or made obvious by Brown and Yamada et al taken singly or in combination.

Each of the claims 2 through 19 depend from claim 1 and for the same reasons that claim 1 is not shown, taught or made obvious by Brown and Yamada et al, claims 2 through 19 are likewise not shown, taught or made obvious by Brown and Yamada et al taken singly or in combination. In addition, applicant reiterates the distinctions that were presented in the last amendment with respect to each of the claims and the references applied by the Examiner.

In addition, Claim 2 recites "providing a data base accessible by said central serving apparatus; and storing said test information in said database." The Examiner states that "Brown teaches providing a database accessible by the server and storing information in the database"

However, claim 1 recites: "processing said impedance cardiography test measurement data in accordance with said one computer program impedance cardiography algorithm to produce test information." Neither Brown nor Yamada shows, teaches or suggests processing medical test measurement data in accordance with any algorithm to produce test information. Accordingly since neither Brown nor Yamada taken singly or in combination show, teach or suggest so producing test information, they can not show, teach or suggest storing test information in a database. For this additional reason claim 2 is not shown, taught or made obvious by Brown and Yamada et al. Brown and Yamada are both silent on impedance cardiography.

Claim 3 recites, inter alia: "associating said stored test information with said patient identification information." As explained with respect to claim 2, since neither Brown nor Yamada taken singly or in combination show, teach or suggest so producing test information, they can not show, teach or suggest storing test information in a database. For this additional reason claim 3 is not shown, taught or made obvious by Brown and Yamada et al.

Claim 4 recites, inter alia: "receiving a request for said test information from a requester; and determining that said requester has authorization to obtain said test information." The Examiner recognizes that neither Brown nor Yamada teaches receiving requests and determining authorization and turns to Basso for such teaching. However, since neither Brown nor Yamada taken singly or in combination show, teach or suggest producing test information, they can not show, teach or suggest receiving a request for such test information. Basso does not show producing such test information either. For this additional reason claim 4 is not shown, taught or made obvious by Brown, Yamada et al and Basso taken singly or in combination.

Claims 5 and 6 depend from claim 4 and for the additional reason that claim 4 is not shown, taught or made obvious by Brown, Yamada and Basso taken singly or in combination, claims 5 and 6 are not shown, taught or made obvious by the references.

Claims 7 and 19 each depends from claim 3 and includes similar language to claim 4 relative to test information. For the same reason that claim 4 is not shown, taught or made obvious by the references taken singly or in combination, claims 7 and 19 are not shown, taught or made obvious by the references.

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Claim 10 recites: "downloading automatic un-install software with said test measurement software, said automatic un-install software being automatically operable to un-install said test measurement software upon successful uploading of said test measurement data to said central serving apparatus." The Examiner points to Shimakawa for software management system in which a client computer automatically uninstalls software after it has been used.

The undersigned has carefully examined Shimakawa and has not found any teaching that an uninstall program is downloaded to a client computer. There is no teaching or suggestion in Shimakawa that an uninstall program is downloaded to a client computer. Rather "uninstall 109" "is a processing portion for changing the registration contents of the history management table 110..." (col. 7, lines 1-5). In other words, the "uninstall" in Shimakawa merely tracks the registration number of software that a client has uninstalled, without any indication that such uninstall is done automatically. Nothing in Shimakawa shows, teaches or suggests downloading uninstall software. It is respectfully submitted that the Examiner has misread Shimakawa.

In addition, nothing in Shimakawa shows, teaches or suggests automatically uninstalling impedance cardiography test measurement software. Nothing in Shimakawa shows, teaches or suggests automatic un-installing test measurement software upon successful uploading of test measurement data. Shimakawa is silent on impedance cardiography.

For this additional reason claim 10 is not shown, taught or made obvious by the references taken singly or in combination.

Claim 11 depends from claim 10 and for the same additional reason that claim 10 is not shown, taught or made obvious by the references taken singly or in combination, claim 11 is not shown, taught or made obvious.

Claim 12 depends from claim 8 and includes language similar to that of claim 10. For the same additional reason that claim 10 is not shown, taught or made obvious by the references, claim 12 is likewise not shown, taught or made obvious.

Accordingly, none of the claims in the application are shown, taught or made obvious by any of the references of record taken singly or in any combination.

In view of the foregoing amendment and comments, it is believed that all the claims presently in the application are in condition for allowance. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Respectfully submitted,
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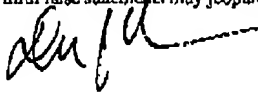
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